

EXHIBIT 2

Glaxo v. Teva C.A. No. 04-171 Telephone Conference 2-25-05.txt

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1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE DISTRICT OF DELAWARE

3 GLAXO GROUP LIMITED, - - -
4 Plaintiff, : CIVIL ACTION
5 v. :
6 TEVA PHARMACEUTICALS USA, INC. :
7 and TEVA PHARMACEUTICALS :
8 INDUSTRIES LIMITED, : NO. 04-171 (KAJ)
9 Defendants. - - -

10 Wilmington, Delaware
11 Friday, February 25, 2005 at 9:30 a.m.
12 TELEPHONE CONFERENCE

13 BEFORE: HONORABLE KENT A. JORDAN, U.S.D.C.J.
14 - - -

15 APPEARANCES:

16 YOUNG CONAWAY STARGATT & TAYLOR, LLP
17 BY: KEVIN M. BAIRD, ESQ.

18 -and-

19 MERCHANT & GOULD
20 BY: MARK D. SCHUMAN, ESQ., and
JOHN M. BURNS, ESQ.
(Minneapolis, Minnesota)

21 -and-

22 GLAXO GROUP LIMITED
23 BY: INNA BELOPOLSKY, ESQ.

24 Counsel for Glaxo Group Limited

25 Brian P. Gaffigan
Official Court Reporter

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1 APPEARANCES (Continued):

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CONNOLLY BOVE LODGE & HUTZ, LLP
3 BY: FRANCIS DIGIOVANNI, ESQ.

4 -and-

5 MORGAN LEWIS & BOCKIUS, LLP
6 BY: BRIAN P. MURPHY, ESQ.
(New York, New York)

7 Counsel for Glaxo Group Limited

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13 P R O C E E D I N G S

14 (REPORTER'S NOTE: The following telephone
15 conference was held in chambers, beginning at 9:30 a.m.)

16 THE COURT: Hi, this is Judge Jordan. Who do I
17 have on the line?

18 MR. DIGIOVANNI: Frank DiGiovanni from Connolly
19 Bove representing plaintiff Glaxo Group, Limited. Also
20 representing plaintiff is Brian Murphy of Morgan Lewis in
21 New York.

22 MR. MURPHY: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. SCHUMAN: For the defendants, Teva, the two
25 Tevas, we have Mark Schuman from Merchant & Gould, and Mark

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1 Berns from my office. We have in-house counsel Inna
2 Belopolsky, and our local counsel, Kevin Baird.

3 THE COURT: All right. I have received letters
4 that you folks sent over, and this is a call set up at
5 Glaxo's request. So, Mr. Murphy, are you taking the lead on
6 this?

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16 produce. Any development work prior to that is irrelevant.

17 THE COURT: Well, here is the deal. We all
18 spend enough time in the law to saying, well, the document
19 speaks for itself doesn't advance the ball much. So if
20 you're prepared to say to the other side, only point A or
21 only points A and B are in contention so they can narrow
22 their request to those two things, I hear Mr. Murphy saying
23 he is satisfied with that and I would be satisfied with
24 that, too.

25 If you are not prepared to do that and to say

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1 well, you can read the document yourself, what you are
2 really saying is I'm keeping my theories in my back pocket
3 and I'm trotting them out later in the case and on that
4 basis, I can readily understand why plaintiff's counsel
5 would be uncomfortable and I would be, too.

6 MR. SCHUMAN: Your Honor, I can make that pH
7 representation. I looked at the documents and our pH is the
8 same as the claim.

9 THE COURT: All right. So that the only thing
10 in issue, you're going on the record right now to say the
11 only thing that you are saying is different about the
12 formation of your client's product is this one distinction
13 that the plaintiff has drawn between the substitution of
14 ethanol for the propylene glycol, is that right?

15 MR. SCHUMAN: Yes, Your Honor.

16 MR. MURPHY: Your Honor, this is Brian Murphy.
17 I appreciate that representation by counsel. My only
18 request that is we did ask a contention interrogatory, point
19 number six. If we could somehow formalize this in a
20 document, whether it's a stip or an answer, that's fine with

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21 me.

22 THE COURT: All right. Well, I'll ask you to do
23 that. That's not too much of a burden, Mr. Schuman. Put it
24 in writing, too, okay?

25 Now, on that base; you agree, don't you, Mr.

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1 Murphy, that you're down to relevance associated with that
2 single substitution that we just described; right?

3 MR. MURPHY: Yes, Your Honor. The issue is
4 therefore propylene glycol and whether or not it's a
5 equivalent or functional equivalent of ethanol.

6 THE COURT: All right. Well, this has been a
7 very helpful conversation I'm not going to need follow up.
8 Both sides have given me a lot of help on this call.

9 Here is the ruling: You give the discovery
10 requested on that specific development issue, Mr. Schuman.

11 MR. SCHUMAN: Yes.

12 THE COURT: And I'm also going to require you to
13 give the marketing information that is sought. I agree with
14 plaintiff's counsel that it is relevant to the question of
15 commercial success. How you assessed, how your client
16 assessed the market may very well be relevant to a judgment
17 about commercial success if one views if they are
18 successful; that is, if the plaintiff is successful
19 demonstrating that we're really talking about essentially an
20 equivalent here. So those two types of information ought to
21 be turned over and they ought to be turned over with real
22 dispatch.

23 How soon will you be able to get that together
24 and get it over to the other side, Mr. Schuman?